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August 5, 1994

Via Hand Delivery

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: GC Docket No. 92-52
Reexamination of Policy Statement On
Comparative Broadcast Hearings

Dear Mr. Caton:

Enclosed for filing in the above-referenced proceeding, on behalf of our client, Irene Rodriguez Diaz de McComas, are an original and nine (9) copies of "Erratum to Comments of Irene Rodriguez Diaz de McComas".

Please direct all responsive communications to Jerome S. Boros at this firm's New York office or to the undersigned.

Very truly yours,

Jerold L. Jacobs

cc: Robert A. Zauner, Esq.
Roy F. Perkins, Jr., Esq.
Timothy K. Brady, Esq.
John L. Tierney, Esq.
(all w/enc.)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Reexamination of the Policy	)	GC Docket No. 92-52
Statement on Comparative	)	
Broadcast Hearings	)	

TO: The Commission

ERRATUM TO COMMENTS OF IRENE RODRIGUEZ DIAZ de McCOMAS

IRENE RODRIGUEZ DIAZ de McCOMAS ("Mrs. McComas"), by her attorneys, hereby submits an Erratum to her July 22, 1994 "Comments of Irene Rodriguez Diaz de McComas" in this proceeding. Two typographical errors should be corrected as follows:

P. 8, line 7: "should now to further" should read "should now go further";

P. 9, line 12: "would be oblige" should read "would oblige".

For the Commission's convenience, attached hereto is a corrected copy of Mrs. McComas' "Comments" containing the two changes noted above.

Respectfully submitted,

IRENE RODRIGUEZ DIAZ de McCOMAS

By: _____
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Jerold L. Jacobs

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Attorneys for
Irene Rodriguez Diaz de McComas

Dated: August 5, 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Reexamination of the Policy Statement on Comparative Broadcast Hearings	)	GC Docket No. 92-52

TO: The Commission

COMMENTS OF IRENE RODRIGUEZ DIAZ de McCOMAS

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Dated: July 22, 1994

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SUMMARY

IRENE RODRIGUEZ DIAZ de McCOMAS ("Mrs. McComas") fully supports Bechtel's pragmatic emphasis on the Commission's need to devise up-to-date and meaningful criteria for comparing the qualifications of would-be broadcast licensees. In these Comments, Mrs. McComas advocates the following revised comparative criteria, in addition to the Minority Preference which the SFNPR (at n.3) exempted from reexamination:

- Reinstate a Gender Preference, based on Congress' intent and the rationale contained in Chief Judge Mikva's dissent in Lamprecht v. FCC, 958 F.2d 382 (D.C. Cir. 1992);
- Specifically overrule the Spousal Attribution Policy as a comparative factor;
- Award a Local Residence/Civic Participation Preference only for a substantial period of adult residence, coupled with a significant amount of civic participation;
- Award a Broadcast Experience Preference only for on-site broadcast station work occurring within the last 7 years; and
- Award a Preference to applicants who never previously received an initial FCC grant of a broadcast facility.

Mrs. McComas recommends that equal credit be given to each of the following preferences which she supports: Minority Preference; Gender Preference; and Local Residence/Civic Participation Preference. These are the criteria which the Commission has again and again concluded are the keys to responsible and diverse broadcasting in the public interest, and the Commission has previously held that the Minority

Preference and the Local Residence Preference are entitled to equal weight. Lesser credit should be accorded to the Broadcast Experience Preference and the Newcomer Preference for first-time licensees.

Before the
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Washington, D.C. 20554

In the Matter of	)	
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Reexamination of the Policy Statement on Comparative Broadcast Hearings	)	GC Docket No. 92-52

TO: The Commission

COMMENTS OF IRENE RODRIGUEZ DIAZ de McCOMAS

IRENE RODRIGUEZ DIAZ de McCOMAS ("Mrs. McComas"), pursuant to §1.415 of the Commission's Rules, hereby comments in response to the Commission's request in the Second Further Notice of Proposed Rulemaking ("SFNPR"), FCC 94-167, released July 22, 1994, for recommendations for "objective and rational criteria...to evaluate the...comparative qualifications [of broadcast applicants]" in light of Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993). In support whereof, Mrs. McComas shows the following:

I. PRELIMINARY STATEMENT

1. Mrs. McComas fully supports Bechtel's pragmatic emphasis on the Commission's need to devise up-to-date and meaningful criteria for comparing the qualifications of applicants for broadcast permits. Bechtel, taken as a whole, calls upon the Commission to scrap illogical and/or outdated regulatory criteria and to substitute principled and practical adjudicatory standards which facilitate differentiating among

applicants on the basis of realistic rather than "tie-breaking" distinctions. Adjudications should be made on the basis of criteria geared to promoting the interests of the public generally and underprivileged elements of the community specifically, and the criteria should be administratively simple to apply and capable of uniform application.

2. To these ends, Mrs. McComas advocates the following revised comparative criteria, in addition to the Minority Preference which the SFNPR (at n.3) exempted from reexamination:

- Reinstatement of a Gender Preference, because of Congress' renewed mandate to the Commission to foster female involvement in media ownership and the additional rationales set out in Chief Judge Mikva's dissent in Lamprecht v. FCC, 958 F.2d 382 (D.C. Cir. 1992);

- Extirpation of the Spousal Attribution Policy as a comparative factor;

- Entitlement to Local Residence/Civic Participation Preference only for a substantial period of adult residence, coupled with a significant amount of civic participation;

- Entitlement to a Broadcast Experience Preference only for on-site broadcast station work occurring within the last 7 years; and

- Award of a Preference to applicants who never previously have received an initial FCC grant of a broadcast facility.

II. A GENDER PREFERENCE SHOULD BE REESTABLISHED

3. Lamprecht v. FCC, supra, held by a 2-1 vote, that the Commission's gender preference was unconstitutional because the Commission had failed to "establish any statisti-

cally meaningful link between ownership by women and programming of any particular kind". 958 F.2d at 398. The Commission decided to acquiesce in this determination, and, on remand, affirmed its original grant without using the Gender Preference. See Jerome Thomas Lamprecht, 7 FCC Rcd 6794, 6795 ¶10 (1992), reversed and remanded by Order in light of Court's decision in Bechtel v. FCC, No. 92-1586 (D.C. Cir. Feb. 9, 1994). However, Mrs. McComas urges that Chief Judge Mikva's dissenting opinion in Lamprecht -- especially his reliance upon Congress' intent and expressed mandate to the Commission to adopt minority and female preferences, as upheld by the Supreme Court in Metro Broadcasting, Inc. v. FCC, 497 U.S. 547 (1990), and upon the findings of various media studies -- provides an adequate basis for the Commission to revisit the Gender Preference, reestablish it in this proceeding as a relevant comparative criterion, and restate it with sufficient "links" to program diversity to pass constitutional muster.

4. Recently, in P.L. 103-66, §6002, 107 Stat. 312, 389 (Aug. 10, 1993), Congress added §309(j)(4)(D) to the Communications Act of 1934, which specifically directed the Commission to "ensure that...businesses owned by...women are given the opportunity to participate in the provision of spectrum-based services...[via] bidding preferences...." This declared Congressional intent to confer a Gender Preference in PCS matters was construed by the Commission as a "directive" and a "mandate" to adopt such a female bidding preference in the

Fifth Report And Order in PP Docket No. 93-253, FCC 94-178, ¶9, released July 15, 1994. Mrs. McComas submits that, in light of Congress' re-declaration of a Gender Preference mandate, which is now engrafted upon the Communications Act itself, the Commission cannot award Gender Preferences in PCS matters while refusing to do so in comparative broadcast cases. "Equal protection of the laws" requires the Commission to award a Gender Preference in broadcast cases as well as in common carrier actions.

III. THE SPOUSAL ATTRIBUTION POLICY SHOULD BE JETTISONED IN COMPARATIVE PROCEEDINGS

5. Closely correlated with the appropriateness of according women a Gender Preference is the inappropriateness of continued uncertainty about whether a "Spousal Attribution Policy" applies in comparative hearing contexts, when the Commission has repudiated that Policy in administering the multiple ownership rules. In scrapping the Spousal Attribution Policy, the Commission acted on the basis of recognizable changes in national socio-economic mores and practices. Those changes -- which were spelled out by the Commission in Clarification Of Commission Policies Regarding Spousal Attribution, 7 FCC Rcd 1920 (1992)-- have vitality in comparative contexts, and the Commission, in revamping its comparative standards, should not forego the opportunity to inter the Spousal Attribution Policy in comparative cases.

6. Indeed, it is ironic that the Commission previously has neglected to disclaim the Policy in comparative cases, given that the Policy was applied in such cases only to effect symmetry with the Spousal Attribution Policy which emerged in the 1970's in applying the duopoly rules. But, at all events, emergent public policy considerations, together with Constitutional standards of fairness call for extirpation of the Policy across-the-board, particularly in view of the compelling reasons enunciated by the Commission in abandoning the Policy, in its administration of the multiple ownership rules.

IV. SUBSTANTIAL ADULT RESIDENCE COUPLED WITH CIVIC PARTICIPATION DESERVES A PREFERENCE

7. In the Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393, 396 (1965), the Commission emphasized the relevance of applicants' local residence combined with civic participation as a significant comparative qualification because of the "knowledge of and interest in the welfare of the Community" which residence and civic activities betoken. In this respect, Mrs. McComas submits that the Commission should implement a policy of localism in a manner compatible both with the Commission's 1965 intent and homespun common sense. To this end Mrs. McComas suggests:

(1) Local residence should be defined by city-grade coverage contours, particularly in this day and age when village, town and city boundaries are not

functionally equivalent with being "local." In modern America, school districts, water districts, voting districts, to name only a few, span municipal boundaries, and local residence should be defined accordingly. Moreover, as an administrative matter, such a standard will facilitate the expeditious disposition of proceedings.

(2) Proposals for future local residence should be excluded from the comparative calculus, because it leads to exaggerated claims, which cannot be monitored on a post-grant basis. In addition, this simplification will contribute further to expeditious disposition of proceedings.

(3) Local residence and civic activities should continue to be treated as a unitary factor. However, both local residence of meaningful duration, <u>together</u> with a meaningful record of pre-application civic activity, uniformly identified in specific terms, in Review Board Decisions, should be a <u>sine qua non</u> for credit on this score. Put otherwise, long-term local residence unaccompanied by meaningful civic activity is oxymoronic, as measured by the litmus of "knowledge of and interest in the welfare of the community." The absence of civic activity (<u>e.g.</u>, school board service, member of a service club, PTA membership, church sodality

participation, auxiliary police patrol, volunteer fireperson) betokens indifference to a community's needs and strongly suggests that the involved person uses the community as a "bedroom." This is pointed up by the several types of membership set out above. Given the countless number of opportunities for civic service, a person who eschews community service should be denied any credit for mere unadorned physical presence in a community. As a reciprocal, credit for business residence, when accompanied by meaningful civic activity, should be awarded to the committed-type who works in a locality and, through dint of civic works in the work-place locality, is attuned to local needs.

(4) Local residence and civic activity should only be awarded on the basis of recency. Residence/activity which terminated long prior to filing an application is of atrophied value in terms of local knowledge, and as such should receive no credit. This comports generally with settled doctrine. For instance, in Swan Broadcasting Limited, 8 FCC Rcd 4208, 4210 ¶10 (1993), aff'g 6 FCC Rcd 17, 21 ¶18 (Rev. Bd. 1991), the Commission ruled that, in comparing the local residence of competing broadcast applicants, the focus should be on adult years. Likewise, in Coastal Broadcasting Part-

ners, 7 FCC Rcd 1432, 1435 nn. 21-24, recon. denied, 7 FCC Rcd 6594 (1992), the Commission awarded only a "marginal" advantage for 37 years of continuous residence compared to 27 years, recognizing that, where substantial periods of residence are involved, numerical differentials take on less significance. The Commission should now go further and disregard distinctions without regulatory difference.

(5) The Civic Participation aspect of the combined Preference should be strengthened in accordance with recent Commission case precedent to require that credit only be given for civic activities which involve substantial and quantified amounts of time and which actually impart community knowledge -- not, for example, merely serving as a speaker at events or collecting charitable contributions. See Beach Broadcasting Limited Partnership, 6 FCC Rcd 885, 886 ¶8 (Rev. Bd. 1991), aff'd, 6 FCC Rcd 4485 (1991); Colonial Communications, Inc., 6 FCC Rcd 2296, 2297 nn. 7, 8 (1991), recon. denied, 7 FCC Rcd 674 (1992). The device of crediting speakers, hosts, and celebrities with civic knowledge credit carries with it the vice of awarding merit for activities which do not reflect community knowl-

edge, and such crediting tends to discriminate against disadvantaged applicants.

(6) In evaluating residence/civic activity, the Commission should be less parochial in granting credit for government service. The Commission now sometimes denies credit for government work-knowledge unless a specific correlation is established between the work experience and the involved community. This is counter-productive -- put otherwise, if an ex-governor of New York State applied for an Albany, New York station, the Commission's practices would oblige the applicant to establish how his state government knowledge applies specifically to Albany, notwithstanding that Albany, as well as the State as a whole, was under the applicant's magisterial jurisdiction. This practice thus reflects a petrified approach to the scope of government, and moreover, denigrates public service in manner totally inconsistent with the duties of a federal agency. The Commission should therefore revise and correct its practices, as recommended herein.

V. RECENT SIGNIFICANT BROADCAST EXPERIENCE SHOULD RECEIVE A PREFERENCE

8. Over the years, the Commission has occasionally awarded a Broadcast Experience Preference for rather attenuat-

ed "broadcast-related" experience, even including college media courses. See, e.g., Jerome Thomas Lamprecht, 99 FCC 2d 1219, 1227 (Rev. Bd. 1985)(applicant majored in radio, television, and film), rev. denied, 3 FCC Rcd 2527 (1988), remanded on other grounds, 958 F.2d 382 (D.C. Cir. 1992). However, in Religious Broadcasting Network, 2 FCC Rcd 6561, 6572-73 (ALJ 1987), aff'd, 3 FCC Rcd 4085 (Rev. Bd. 1988) (subsequent history omitted), the Presiding ALJ disallowed any comparative credit for "broadcast-related experience [derived from]...taking college courses in film production and appearing on a number of television shows and assisting in designing the concept and format of these shows".

9. Mrs. McComas recommends that the Commission in appropriate cases, should continue to award a Broadcast Experience Preference, but urges that the Commission's policy should be toughened to credit only on-site broadcast activities and should exclude credit for college courses, off-site program production, work in advertising agencies, and any other "broadcast-related" activities. The Commission may also wish to consider denying credit for mere employment at broadcast stations not specifically related to broadcasting (such as secretarial, bookkeeping, and custodial work). Finally, Mrs. McComas believes that the Commission should overrule case precedent which allows broadcast experience credit, regardless of it being outdated. See, e.g., New Continental Broadcasting Co., 88 FCC 2d 830 (Rev. Bd.

1988)(credit given for broadcast activity which ceased in 1977)(subsequent history omitted). For "bright line" purposes, Mrs. McComas recommends that the Commission should only credit broadcast experience which is less than 7 years old.

VI. CREDIT SHOULD BE AWARDED TO NEWCOMERS

10. In the awarding of spectrum space, the Commission should seek to maximize the number of citizens who benefit from governmental largess. Also the Commission should seek to encourage disadvantaged citizens to apply for licensing. These goals will be advanced, if a preference is awarded to applicants which never previously have received an initial broadcast grant from the Commission.

VII. LIMITED AMENDMENT OPPORTUNITY SHOULD BE GIVEN

11. The SFNPR (at ¶8) also requests comment on whether it would be appropriate to permit applicants in pending cases to amend their proposals in light of newly-adopted standards and when further evidentiary proceedings might be warranted. Mrs. McComas does not believe that applicants which have already been designated for hearing should be allowed to amend their proposals after this proceeding to improve their comparative standing. Such applicants have already expended significant time and funds in reliance on the existing comparative standards. However, for the benefit of whichever part of the adjudicatory chain has jurisdiction over each

pending comparative case, such applicants should be allowed to file supplemental pleadings and replies addressing the effect of the new standards upon their comparative ranking in their frozen comparative cases, and where records are stale further evidentiary proceedings should be held. Such supplemental hearings are not likely to become lengthy proceedings.

VIII. CONCLUSION

12. The question remains what relative weight should be given to the new comparative criteria in an analysis that does not rely on integration (SFNPR at ¶7). Mrs. McComas recommends that equal credit be given to: Minority Preference; Gender Preference; and Local Residence/Civic Participation Preference. These are the criteria which the Commission has again and again concluded are the keys to responsible and diverse broadcasting in the public interest, and the Commission has previously held in Radio Jonesboro, Inc., 100 FCC 2d 941, 945 (1985), appeal terminated by settlement, FCC 85I-128, released Sept. 19, 1985, that the Minority Preference and the Local Residence Preference are entitled to equal weight. The Commission also has emphasized the minor importance of Broadcast Experience, and any preference on this score should be no more than slight. The Newcomer Preference for first-time licensees should approximate the weight given for Broadcast Experience.

Respectfully submitted,

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